

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2032.03
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	April 30, 2003
DATE OF REPORT:	May 28, 2003
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	June 18, 2003

**COMPLAINT ISSUES:**

Whether the MSD Washington Township violated:

511 IAC 7-27-9(b) by failing to make available to students with disabilities the variety of educational programs and services that are made available to nondisabled students, specifically, precluding students with disabilities from the "pre-nine" classes at the career center.

**FINDINGS OF FACT:**

1. The Student is fifteen years old and is eligible for special education and related services as a student with a health impairment and a learning disability.
2. In the fall of 2002, the Student and the Parent toured the vocational education building. They were told about a program (Pre-Ninth Grade Transition Program or "Pre-Nine") that provides an overview of vocational opportunities by rotating students through vocational education experiences. Career exploration is of great importance to the Parent and the Student.
3. After the Student and Parent developed a proposed eighth grade schedule that included Pre-Nine, the special education teacher informed the Parent that Pre-Nine was not an option because ".....as of now, the policy stands that no special ed student can take the pre-nine class...."
4. Candidates for Pre-Nine are eighth grade students whose academic and social performance does not merit promotion to ninth grade. Pre-Nine is an alternative to repeating eighth grade in a middle school. The program is designed to prepare students, both academically and socially, to be successful in the ninth grade general education curriculum. Pre-Nine is not primarily a vocational education experience, although Pre-Nine does include career exploration.
5. In the spring of a student's eighth grade year, a middle school principal may recommend a student for Pre-Nine when, in addition to proposed retention, the following criteria are met:
  - Below eighth-grade ISTEP+ standards in both language arts and mathematics (i.e., has taken the ISTEP+ test and failed it);
  - Grades of F in both English and mathematics in two of the first three grading periods in eighth grade;
  - At least one previous retention; and
  - Referral by a guidance counselor.

The Pre-Ninth Grade Transition Program Proposal does not contain a statement excluding all students with disabilities from the program. However, Pre-Nine is not designed for students with the most significant cognitive disabilities who take an alternate assessment instead of ISTEP+.

6. Retention decisions for students with disabilities are made within the case conference committee (CCC) process. In lieu of retention, a CCC will explore options such as changing the intensity of special education services. For this reason, few students with disabilities might be retained, and as a result, few would meet the eligibility requirements for Pre-Nine.
7. Pre-Nine is funded by a combination of local funds and an Alternative Education Grant from the Indiana Department of Education. The grant application identifies the targeted students as those with attendance problems, with chronic disruptive behavior, who are at risk of dropping out, and who are performing below standard on ISTEP+. Special education representatives were members of the committee that designed and planned Pre-Nine, including the eligibility criteria.
8. Since Pre-Nine's beginning in the 2000–2001 school year, approximately five to seven students with disabilities have participated in Pre-Nine. The Pre-Nine program was designed for a maximum of twenty-five students (or seventy-five students over a three-year period). Pre-Nine has not reached its maximum enrollment every semester.
9. The Student did not meet the criteria for Pre-Nine because the Student was a seventh grade student during the 2002-2003 school year.
10. As a result of an informational meeting on May 9, 2003, and a case conference committee meeting on May 21, 2003, the Parent and the School have agreed upon an individualized education program (IEP) and class schedule that includes career exploration during the 2003-2004 school year.

## **CONCLUSIONS:**

1. Findings of Fact #2, #4, #5, #6, #7, and #8 indicate that all students with disabilities are not precluded from participating in the Pre-Nine program. The special education teacher's statement, as quoted in Finding of Fact #3, is not correct. Finding of Fact #9 indicates a non-discriminatory reason for not recommending or selecting the Student for Pre-Nine. Therefore, no violation of 511 IAC 7-27-9(b) occurred.

**The Department of Education, Division of Exceptional Learners requires no corrective action based on the Findings of Fact and Conclusions listed above.**